

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows.

I. DEFINITIONS

1.01 GENERAL

Unless the context clearly requires otherwise, capitalized terms used in this Agreement shall have the meanings specified in this Article I. Certain additional terms may be defined elsewhere in this Agreement.

“Agreement” means this Land Use Restriction Agreement, as it may from time to time be amended, for the Project.

“Annual Income” means “annual income” as defined in 24 C.F.R. § 92.203, as amended.

“Area Median Income” means the median income (as such median income is adjusted for family size and established by HUD at least annually in accordance with federal law or as otherwise established by the GLO) for the area where the Property is located.

“C.F.R.” means the Code of Federal Regulations, the codification of the general and permanent rules and regulations (sometimes called administrative law) published in the Federal Register by the executive departments and agencies of the federal government of the United States.

“Compliance Unit Report” or “CUR” means a compliance document prepared by <<Subrecipient/Developer>>, as required by the GLO, on a form prescribed by the GLO, and used to report and certify information related to individual household income, rent, certification dates, and other necessary data to ensure compliance with applicable Program regulations.

“De Minimis Amount” means any amount of Hazardous Materials—if such materials are being transported on or from the Property, being stored for use by <<Subrecipient/Developer>> or a tenant on the Property in connection with <<Subrecipient/Developer>>’s or such tenant’s operations or tenancy, or being used by <<Subrecipient/Developer>> or a tenant on the Property—in such quantities and in a manner that both (a) does not constitute a violation or threatened violation of any Environmental Laws and Regulations or local, state, or federal governmental requirements or require any reporting or disclosure under any Environmental Laws and Regulations or local, state, or federal governmental requirements and (b) is consistent with customary business practice for such operations in the state where the Property is located.

“Disaster” means the event(s) identified in the Grant Agreement that caused widespread or severe damage, injury, or loss of life or property, leading to a declaration of “major disaster” by the President of the United States, pursuant to Title IV of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5121 *et seq.*), and/or a “state of disaster” by the Governor of the State of Texas, pursuant to Tex. Gov’t. Code § 418.014.

“[Document G704](#)” means Document G704-2017, entitled *Certificate of Substantial Completion*, as may be amended, a trademarked form created by the American Institute of Architects and used by the GLO to substantiate draw requests and Project completion.

“[Effective Date](#)” means the date of substantial completion of construction activities for the Project, as listed on the GLO-approved Document G704.

“[Environmental Laws and Regulations](#)” means any federal, state, or local law, statute, ordinance, or regulation, whether now or hereafter in effect, pertaining to health, industrial hygiene, or the environmental conditions on, under, or about the Property, including without limitation, the following, as now or hereafter amended: Hazardous Materials Transportation Act (49 U.S.C. §5101 *et seq.*); Insecticide Fungicide and Rodenticide Act (7 U.S.C. § 136 *et seq.*); the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*; “NEPA”), and HUD’s implementing regulations, including 24 C.F.R. § 92.352, and the related activities listed at 24 C.F.R. Parts 50, 51, 55, and 58 (“NEPA regulations”), including screening for vapor encroachment following American Society for Testing and Materials (“ASTM”) 2600-10; Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. § 9601 *et seq.*; “CERCLA”), as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub. L. 99-499, 100 Stat. 1613, as amended by Pub. L. 107-377; “Superfund” or “SARA”); Resource, Conservation, and Recovery Act (24 U.S.C. § 6901 *et seq.*; “RCRA”); the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*); Emergency Planning and Community Right to Know Act of 1986 (42 U.S.C. §11001 *et seq.*); Clean Air Act (42 U.S.C. § 7401 *et seq.*; “CAA”); Federal Water Pollution Control Act and amendments (33 U.S.C. § 1251 *et seq.*; “Clean Water Act” or “CWA”); any corresponding state laws or ordinances, including but not limited to Chapter 26 of the Texas Water Code regarding Water Quality Control; Texas Solid Waste Disposal Act (Chapter 361 of the Texas Health & Safety Code, formerly Tex. Rev. Civ. Stat. Ann. Art. 4477-7); Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (Chapter 363 of the Texas Health & Safety Code); County Solid Waste Control Act (Chapter 364 of the Texas Health & Safety Code); Texas Clean Air Act (Chapter 382 of the Texas Health & Safety Code); Hazardous Communication Act (Chapter 502 of the Texas Health & Safety Code); and regulations, rules, guidelines, or standards promulgated pursuant to such laws, statutes, and regulations, as such statutes, regulations, rules, guidelines, and standards are amended from time to time.

“[Event of Default](#)” means the occurrence of any of the events set forth in Article V of this Agreement.

“[Exhibit](#)” means documents, terms, conditions, or additional information physically added to the Agreement following the execution page or included by reference.

“[Extremely Low-Income Household](#)” or “[ELI Household](#)” means families and individuals whose Annual Incomes do not exceed thirty percent (30%) of the Area Median Income for the area in which the Property is located.

“[GLO Housing Guidelines](#)” means the guidance document issued by the GLO, as amended or superseded from time to time, that serves as a comprehensive guidebook to entities provided funds through the GLO in response to the Disaster in their performance of Activities under the GLO’s CDBG-DR housing programs.

“**Grant Agreement**” means the Multi-Family Residential Construction Services Grant Agreement, GLO Contract No. <<Contract Number>>, executed by and between the GLO and <<Subrecipient/Developer>>, effective on <<Date>>.

“**Hazardous Substance**” or “**Hazardous Material**” means any substance defined as a hazardous substance, hazardous material, hazardous waste, toxic substance or toxic waste in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”; 42 U.S.C. §9601 *et seq.*, as amended); the Hazardous Materials Transportation Act (49 U.S.C. § 5101 *et seq.*, as amended); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*, as amended); any similar applicable federal, state, or local law; or in any regulation adopted or publication promulgated pursuant to any said law, either existing or promulgated from time to time, other than *De Minimis* Amounts of any such substances.

“**HUD**” means the United States Department of Housing and Urban Development.

“**Low- to Moderate-Income Household**” or “**LMI Household**” means a family or individual whose Annual Income does not exceed eighty percent (80%) of the median family income or such other income limits as determined by HUD.

“**Program**” means the <<Disaster Recovery Reallocation Program / Affordable Rental Program>> administered by the GLO using an allocation of HUD CDBG-DR funding to provide funds for rehabilitation, reconstruction, and new construction of affordable multi-family housing projects in areas impacted by the Disaster.

“**Project**” means the #-Unit multi-family rental housing development known as <<Development Name>> located on the Property and <<Subrecipient/Developer>>’s activities concerning the ownership, construction, and operation of the development during the Term of this Agreement.

“**Project Documents**” means all tenant lists, applications (whether accepted or rejected), leases, lease addenda, tenant and <<Subrecipient/Developer>> certifications, advertising records, waiting lists, rental calculations and rent records, Utility Allowance documentation, income examinations and re-examinations relating to the Project, and any other federally, state-, or GLO-required documentation otherwise necessary to sufficiently evidence compliance with the Program.

“**Property**” means the real property located at <<Address>>, more particularly described in **Exhibit A**.

“**Qualifying Unit**” means a Unit occupied by or designated to be occupied by a Low- to Moderate-Income Household or an Extremely Low-Income Household in accordance with this Agreement.

“**Standard Operating Procedures**” or “**SOP**” means the policies and procedures issued by the GLO, in accordance with HUD requirements, to administer the Program, available online at <https://www.glo.texas.gov> and incorporated herein by reference.

“**Term**” means the <<number of years>>-year (<<#>>-year) period that commences on the Effective Date.

“Unit” means a residential dwelling in the Project containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.

“Utility Allowance” means a monthly monetary amount, as established by the local public housing authority or as otherwise allowed by HUD or Program rules, to be paid by a tenant for utilities and services (excluding telephone, cable, and broadband services).

1.02 INTERPRETATIVE PROVISIONS

Unless the context clearly indicates otherwise, an above definition for a singular term shall also apply (where appropriate) to the plural form of such term and vice versa to the extent necessary for giving the proper meanings to the terms defined in this Article I and/or terms otherwise used in this Agreement.

II. COVENANTS OF <<SUBRECIPIENT/DEVELOPER>>

2.01 RESTRICTIVE COVENANTS - OCCUPANCY AND USE

<<Subrecipient/Developer>> represents, warrants, and covenants that the Project, for the Term of the Agreement, shall comply with the following occupancy and use requirements.

(a) Long-Term Occupancy Requirements

Notwithstanding anything herein to the contrary, <<Subrecipient/Developer>> must use, at a minimum, <<LMI% requirement>>% of the total number of Units for affordable rental housing for Low- to Moderate-Income Households for the duration of the Term. <<Subrecipient/Developer>> has designated **number (#)** of the **number (#)** total Units as Qualifying Units to be occupied by Low- to Moderate-Income Households.

(b) Accessibility

(i) At least one (1) Unit or five percent (5%) of all Units, whichever is greater, shall be designed to be made accessible for an individual with mobility impairment disabilities under Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794. <<Subrecipient/Developer>> has designed **number (#)** Unit(s), or **number** percent (**#**%) of all Units, to be accessible for individuals with a mobility impairment disability as described above.

(ii) At least one (1) Unit or two percent (2%) of all Units, whichever is greater, shall be designed and built to be accessible for persons with hearing or vision impairment disabilities in accordance with the accessibility requirements under Section 504 of the Rehabilitation Act of 1973, codified at 29 U.S.C. § 794. <<Subrecipient/Developer>> has designed **number (#)**, or **number** percent (**#**%) of all Units, to be accessible for individuals with hearing or vision impairment disabilities as described above.

(iii) If the Project includes the new construction of single-family Units [one (1) to three (3) Units per building], <<Subrecipient/Developer>> shall construct every Unit to meet or exceed the accessibility requirements of

Section 2306.514 of the Texas Government Code, as may be amended from time to time.

2.02 RESTRICTIVE COVENANTS – RENTS

<<Subrecipient/Developer>> represents, warrants, and covenants that the Project, for the Term of the Agreement, shall comply with the following rent requirements.

(a) Rent Limitations for Low- to Moderate-Income Households

The maximum monthly rent (including the tenant-paid portion of the rent and any Utility Allowance) charged by <<Subrecipient/Developer>> for each of the **number (#)** Qualifying Units occupied by Low- to Moderate-Income Households, not including Extremely Low-Income Households, must be set at levels that are affordable to Low- to Moderate-Income Households. Such maximum monthly rent shall not exceed the higher of (i) High Home Investment Partnership (“HOME”) Rents (as defined under 24 C.F.R. § 92.252 *et seq.*), as amended, or (ii) exception rents allowed by HUD on Federal or State project-based rental subsidy programs pursuant to 24 C.F.R. § 92.252(a)(2), as amended.

(b) Rent Limitations for Extremely Low-Income Households

The maximum monthly rent (including the tenant-paid portion of the rent and any Utility Allowance) charged by <<Subrecipient/Developer>> for each of the **number (#)** Qualifying Units occupied by Extremely Low-Income Households must be set at levels that are affordable to Extremely Low-Income Households and shall not exceed the thirty percent (30%) maximum-rent limits determined by HUD and published on an annual basis with adjustment for family size.

2.03 PROPERTY STANDARDS

<<Subrecipient/Developer>> covenants that each Unit shall be constructed and maintained in accordance with the requirements set forth in applicable HUD regulations, Texas Minimum Construction Standards, HUD’s National Standards for the Physical Inspection of Real Estate (NSPIRE), and the GLO Housing Guidelines.

2.04 HAZARDOUS MATERIALS

(a) <<Subrecipient/Developer>> covenants that <<Subrecipient/Developer>> shall do the following:

- (i) not receive, store, dispose, or release any Hazardous Materials on or to the Property or transport any Hazardous Materials to or from the Property or permit the existence of any Hazardous Materials contamination;
- (ii) give written notice to the GLO promptly upon <<Subrecipient/Developer>> acquiring knowledge of the presence of any Hazardous Materials on the Property or the transport of any Hazardous Materials to or from the Property or of the existence of any Hazardous Materials contamination, with a full description thereof;

- (iii) comply promptly, at <<Subrecipient/Developer>>'s sole cost and expense, with any Environmental Laws and Regulations and local, state, or federal governmental requirements requiring the removal, treatment, or disposal of such Hazardous Materials or Hazardous Materials contamination and provide the GLO with satisfactory evidence of such compliance;
 - (iv) provide the GLO, within thirty (30) days after demand by the GLO, with financial assurance evidencing to the GLO's satisfaction that the necessary funds are available to pay the cost of removing, treating, and disposing of such Hazardous Materials or Hazardous Materials contamination and discharging any assessments that may be established on the Property as a result thereof; and
 - (v) ensure that all leases, licenses, and agreements of any kind, whether written or oral, now or hereafter executed that permit any party to occupy, possess, or use in any way the Property or any part thereof include an express prohibition on the disposal or discharge of any Hazardous Materials at or affecting the Property, and a provision stating that failure to comply with such prohibition shall expressly constitute a default under any such agreement.
- (b) <<Subrecipient/Developer>> covenants that <<Subrecipient/Developer>> shall not cause or suffer any liens to be recorded against the Property as a consequence of, or in any way related to, the presence, remediation, or disposal of Hazardous Materials in or about the Property, including any so-called state, federal, or local "Superfund" lien relating to such matters.
- (c) <<SUBRECIPIENT/DEVELOPER>> SHALL AT ALL TIMES RETAIN ANY AND ALL LIABILITIES ARISING FROM THE PRESENCE, HANDLING, TREATMENT, STORAGE, TRANSPORTATION, REMOVAL, OR DISPOSAL OF HAZARDOUS MATERIALS ON THE PROPERTY. REGARDLESS OF WHETHER ANY EVENT OF DEFAULT, AS DEFINED IN THIS AGREEMENT, SHALL HAVE OCCURRED AND BE CONTINUING OR ANY REMEDIES IN RESPECT OF THE PROPERTY ARE EXERCISED BY THE GLO, <<SUBRECIPIENT/DEVELOPER>> SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE GLO FROM AND AGAINST ANY AND ALL LIABILITIES (INCLUDING STRICT LIABILITY); SUITS; ACTIONS; CLAIMS; DEMANDS; PENALTIES; DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, CONSEQUENTIAL DAMAGES, INTEREST, PENALTIES, FINES, AND MONETARY SANCTIONS); LOSSES; COSTS; AND EXPENSES—INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND REMEDIAL COSTS—(THE FOREGOING ARE HEREINAFTER COLLECTIVELY REFERRED TO AS "LIABILITIES") THAT MAY NOW OR IN THE FUTURE (WHETHER BEFORE OR AFTER THE CULMINATION OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT) BE INCURRED OR SUFFERED BY THE GLO BY REASON OF, RESULTING FROM, IN CONNECTION WITH, OR ARISING IN ANY MANNER WHATSOEVER OUT OF THE BREACH OF ANY WARRANTY OR

COVENANT OR THE INACCURACY OF ANY REPRESENTATION OF <<SUBRECIPIENT/DEVELOPER>> CONTAINED OR REFERRED TO IN THIS SECTION OR THAT MAY BE ASSERTED AS A DIRECT OR INDIRECT RESULT OF THE PRESENCE ON OR UNDER, OR ESCAPE, SEEPAGE, LEAKAGE, SPILLAGE, DISCHARGE, EMISSION, OR RELEASE FROM THE PROPERTY OF ANY HAZARDOUS MATERIALS OR ANY HAZARDOUS MATERIALS CONTAMINATION OR ARISE OUT OF OR RESULT FROM THE ENVIRONMENTAL CONDITION OF THE PROPERTY OR THE APPLICABILITY OF ANY ENVIRONMENTAL LAWS AND REGULATIONS AND LOCAL, STATE, OR FEDERAL GOVERNMENTAL REQUIREMENTS RELATING TO HAZARDOUS MATERIALS, REGARDLESS OF WHETHER OR NOT CAUSED BY OR WITHIN THE CONTROL OF <<SUBRECIPIENT/DEVELOPER>> OR THE GLO.

SUCH LIABILITIES SHALL INCLUDE, WITHOUT LIMITATION, THE FOLLOWING: (I) INJURY OR DEATH TO ANY PERSON; (II) DAMAGE TO OR LOSS OF THE USE OF ANY PROPERTY; (III) THE COST OF ANY DEMOLITION AND REBUILDING OF ANY IMPROVEMENTS NOW OR HEREAFTER SITUATED ON THE PROPERTY OR ELSEWHERE, AND THE COST OF REPAIR OR REMEDIATION OF ANY SUCH IMPROVEMENTS; (IV) THE COST OF ANY ACTIVITY REQUIRED BY ANY GOVERNMENTAL AUTHORITY; (V) ANY LAWSUIT BROUGHT OR THREATENED, GOOD FAITH SETTLEMENT REACHED, OR GOVERNMENTAL ORDER RELATING TO THE PRESENCE, DISPOSAL, RELEASE, OR THREATENED RELEASE OF ANY HAZARDOUS MATERIAL, ON, FROM, OR UNDER THE PROPERTY; AND (VI) THE IMPOSITION OF ANY LIENS ON THE PROPERTY ARISING FROM THE ACTIVITY OF <<SUBRECIPIENT/DEVELOPER>> OR <<SUBRECIPIENT/DEVELOPER>>'S PREDECESSORS IN INTEREST ON THE PROPERTY OR FROM THE EXISTENCE OF HAZARDOUS MATERIALS UPON THE PROPERTY OR HAZARDOUS MATERIALS CONTAMINATION.

- (d) The covenants and agreements contained in this section shall survive the consummation of the transactions contemplated by this Agreement.

2.05 COVENANTS TO RUN WITH THE LAND

- (a) This Agreement and the covenants, reservations, and restrictions contained herein shall be deemed covenants running with the land for the benefit of <<Subrecipient/Developer>> and <<Subrecipient/Developer>>'s heirs, assigns, and successors; the GLO and its successors; and/or HUD and its successors and shall pass to and be binding on <<Subrecipient/Developer>>'s heirs, assigns, and successors in title to the Property, regardless of the method in which title is transferred. If the Property does not include title to land but includes a leasehold interest in such land, this Agreement and the covenants, reservations, and restrictions contained herein shall bind the leasehold interest as well as the Property and shall pass to and be binding upon all heirs, assigns, and successors of

<<Subrecipient/Developer>> to such interests. Upon expiration of the Term and in accordance with, and satisfaction of, the terms hereof, said covenants, reservations, and restrictions shall expire. During the Term, each contract, deed, or other instrument hereafter executed covering or conveying the Property or any portion thereof shall conclusively be held to be executed, delivered, and accepted subject to such covenants, reservations, and restrictions—regardless of whether such covenants, reservations, and restrictions are set forth in such contract, deed, or other instrument. If a portion of the Property is conveyed during the Term, all such covenants, reservations, or restrictions shall run to each portion of the Property.

- (b) <<Subrecipient/Developer>>, at its own cost and expense, shall cause this Agreement to be duly recorded, filed, re-recorded, and re-filed as needed in the real property records of the county clerk for each county in which the Project is physically located. <<Subrecipient/Developer>> shall pay, or cause to be paid, all recording, filing, or other taxes, fees, and charges. <<Subrecipient/Developer>> shall comply with all such statutes and regulations as may be required by law in order to establish, preserve, and protect the ability of the GLO or HUD to enforce this Agreement.
- (c) <<Subrecipient/Developer>>—or <<Subrecipient/Developer>>'s heirs, assigns, or successors, as applicable—shall obtain the written consent to the terms of this Agreement from any current or future lienholder of a lien against the Project and/or Property.

2.06 NOTICE OF LEASE, SALE, OR CONVEYANCE OF PROPERTY

- (a) On or before the Property is leased, sold, or conveyed during the Term of this Agreement, <<Subrecipient/Developer>> is obligated to notify the GLO in writing, as required herein, of such conveyance.
- (b) This notice requirement shall be binding on <<Subrecipient/Developer>>'s heirs, assigns, and successors.

III. ADMINISTRATION

3.01 FEDERAL AND STATE REQUIREMENTS

For the Term of this Agreement, <<Subrecipient/Developer>> must comply with all applicable federal, state, and local laws, statutes, ordinances, and regulations, including, but not limited to regulations set forth in 24 C.F.R. Part 570, as amended from time to time, that are promulgated by HUD or any respective successor pursuant to federal law.

3.02 MAINTENANCE OF DOCUMENTS

All Project Documents must be retained for the Term of the Agreement. All Project Documents shall at all times be kept separate and identifiable from any other business of <<Subrecipient/Developer>> that is unrelated to the Project or Property. All Project Documents shall be maintained in compliance with the Program, SOPs, HUD rules and regulations, and any other requirements of the State of Texas. All Project Documents shall be kept in a reasonable condition for proper audit and shall be subject to examination and

photocopying during business hours by representatives of the GLO, HUD, a designated representative of the GLO or HUD, and/or any other designated federal or state agency.

3.03 COMPLIANCE REVIEW

During the Term, <<Subrecipient/Developer>> agrees to permit the GLO, HUD, a designated representative of the GLO or HUD, and/or any other designated federal or state agency to access the Property for the purpose of performing monitoring for compliance with the provisions contained herein. In conducting any compliance reviews, the GLO, HUD, or other designated federal or state agency will rely primarily on information obtained from <<Subrecipient/Developer>>'s records and reports, on-site monitoring, and audit reports. The GLO, HUD, or other designated federal or state agency may also consider other relevant information gained from other sources, including litigation and citizen complaints.

3.04 AFFIRMATIVE MARKETING

If required, <<Subrecipient/Developer>> shall maintain and abide by an affirmative marketing plan as outlined in the requirements found at 24 C.F.R. Part 200, Subpart M. <<Subrecipient/Developer>> further agrees to maintain documents and records evidencing its compliance with said plan and the affirmative marketing requirements.

3.05 REPORTING REQUIREMENTS AND CERTIFICATION

- (a) <<Subrecipient/Developer>> shall prepare and deliver on an annual basis or when otherwise requested by the GLO, to the satisfaction of the GLO, the following Project reports and documentation:
- (i) A Compliance Unit Report, in a form prescribed by the GLO;
 - (ii) A certificate of continuing compliance with this Agreement, in a form prescribed by the GLO;
 - (iii) Records that demonstrate that the Project meets the property standards as set forth herein; and
 - (iv) Supporting documentation, certified by a certified public accountant or (at the option of the GLO) <<Subrecipient/Developer>> and in such reasonable detail as the GLO may request, of the income from and expenses of one or more of the following:
 - (1) the conduct of any business on the Project;
 - (2) the operation of the Project; or
 - (3) the leasing of the Project, or any part thereof, for the last twelve-month (12-month) period prior to the giving of such notice.
- (b) The GLO may also request and, upon said request, <<Subrecipient/Developer>> shall provide within the time period as requested by the GLO the following Project Documents, including, but not limited to, the following:

- (i) Data, certificates, reports, statements, documents, or further information regarding the business assets, liabilities, financial position, projections, results of operations, or business prospects of <<Subrecipient/Developer>> or such other matters concerning <<Subrecipient/Developer>>'s compliance with the CDBG-DR Regulations, the terms of this Agreement, and the GLO Housing Guidelines;
- (ii) Records required under Title 24, Section 570.490, of the Code of Federal Regulations for the Term;
- (iii) Other federally required records including, without limitation, the following:
 - (1) If required, records indicating compliance with the affirmative marketing procedures and requirements under 24 C.F.R. Part 200;
 - (2) Records that demonstrate compliance with environmental review requirements in 24 C.F.R. Part 58 and the National Environmental Policy Act of 1969 (42 U.S.C. § 4321, et seq.), if applicable;
 - (3) Records that demonstrate compliance with the requirements, as applicable, in 24 C.F.R. § 570.606 and 24 C.F.R. Part 42 regarding displacement, relocation, and real property acquisition;
 - (4) Records demonstrating compliance with the flood insurance requirements under 24 C.F.R. § 570.605; and
 - (5) Records demonstrating HUD's review and audits under 24 C.F.R. § 570.493;
- (iv) Records and information regarding the Project's ongoing and future operations;
- (v) Any other contracts and agreements that pertain to facilities located on the Property or that otherwise generate ancillary income for the Project; and
- (vi) Any other such items as requested by the GLO.

IV. REPRESENTATIONS AND WARRANTIES OF <<SUBRECIPIENT/DEVELOPER>>

4.01 REPRESENTATIONS AND WARRANTIES

<<Subrecipient/Developer>> represents and warrants to the GLO the following:

- (a) To the best of <<Subrecipient/Developer>>'s knowledge, this Agreement and <<Subrecipient/Developer>>'s obligations hereunder:
 - (i) shall not violate any contractual covenants or restrictions (1) between <<Subrecipient/Developer>> or any third party or (2) affecting the Property;
 - (ii) will not conflict with any of the instruments that create or establish <<Subrecipient/Developer>>'s authority if <<Subrecipient/Developer>> is not an individual;

- (iii) will not conflict with any applicable public or private restrictions;
 - (iv) do not require any consent or approval of any public or private authority that has not already been obtained; and
 - (v) are not threatened with invalidity or unenforceability by any action, proceeding, or investigation, pending or threatened, by or against (1) <<Subrecipient/Developer>>, without regard to capacity; (2) any person with whom <<Subrecipient/Developer>> may be jointly or severally liable; or (3) the Property or any part thereof.
- (b) To the best of <<Subrecipient/Developer>>'s knowledge at the time of execution of this Agreement, <<Subrecipient/Developer>> knows of no action, litigation, investigation, or proceeding pending or threatened against <<Subrecipient/Developer>>, the Project, and/or the Property that, if adversely determined, could individually or in the aggregate have an adverse effect on title to or the use, enjoyment, or value of the Project or Property or any portion thereof or that could in any way interfere with the consummation or enforceability of this Agreement.
- (c) All warranties, representations, and certifications made and all information and materials submitted, or caused to be submitted, by <<Subrecipient/Developer>> to the GLO in connection with the Project are true and correct. There have been no material changes or conditions affecting any of such warranties, representations, certifications, materials, or other information prior to the effective date thereof.
- (d) <<Subrecipient/Developer>> has not and will not execute any other agreement with provisions contradictory to, or in opposition to, the provisions herein. In any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth and supersede any other requirements in conflict herewith.
- (e) <<Subrecipient/Developer>> has freely and without reservation placed itself under the obligations of this Agreement. The receipt of funding from the GLO in the form of CDBG-DR funds pursuant to the Grant Agreement is an essential part of the consideration for this Agreement.
- (f) <<Subrecipient/Developer>> shall ensure each Unit in the Project contains separate and complete physical facilities and fixtures for living, sleeping, eating, cooking, and sanitation.
- (g) <<Subrecipient/Developer>> shall ensure all common areas on the Property including, without limitation, any laundry or community facilities, shall be for the exclusive use of the tenants and their guests and shall not be available for general public use during the Term of this Agreement.
- (h) <<Subrecipient/Developer>>, or <<Subrecipient/Developer>>'s heirs, assigns, and successors, as applicable, will not sell, transfer, or exchange any portion of the Project during the Term of this Agreement unless it sells, transfers, or exchanges the entire Project to the same person or entity.

- (i) <<Subrecipient/Developer>> shall not permit the use of any Unit for any purpose other than rental housing during the Term of this Agreement, unless required by law.
- (j) If the Project, or any part thereof, is damaged, destroyed, condemned, or acquired for public use, <<Subrecipient/Developer>> will use its best efforts to repair and restore the Project either to substantially the same condition as existed prior to the event causing damage or destruction or to relieve the condemnation. <<Subrecipient/Developer>> will thereafter operate the Project in accordance with the terms of this Agreement.

4.02 INDEMNIFICATION

<<SUBRECIPIENT/DEVELOPER>> SHALL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE STATE OF TEXAS, THE GLO, HUD, AND/OR THEIR OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, CONTRACTORS, ASSIGNEES, AND/OR DESIGNEES FROM AND AGAINST ANY AND ALL LIABILITY, ACTIONS, CLAIMS, DEMANDS, DAMAGES, PROCEEDINGS, SUITS, AND ALL RELATED COSTS, ATTORNEYS' FEES, AND EXPENSES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF <<SUBRECIPIENT/DEVELOPER>> OR ITS OFFICERS, AGENTS, EMPLOYEES, REPRESENTATIVES, SUPPLIERS, CONTRACTORS, SUBCONTRACTORS, ASSIGNEES, DESIGNEES, OR SUPPLIERS OF CONTRACTORS OR SUBCONTRACTORS IN THE EXECUTION OR PERFORMANCE OF THE AGREEMENT. <<SUBRECIPIENT/DEVELOPER>> AND THE GLO SHALL FURNISH TIMELY WRITTEN NOTICE TO EACH OTHER OF ANY SUCH CLAIM. <<SUBRECIPIENT/DEVELOPER>> SHALL BE LIABLE TO PAY ALL COSTS OF DEFENSE, INCLUDING ATTORNEYS' FEES. <<SUBRECIPIENT/DEVELOPER>> SHALL COORDINATE ITS DEFENSE WITH THE OFFICE OF THE ATTORNEY GENERAL WHEN TEXAS STATE AGENCIES ARE NAMED DEFENDANTS IN ANY LAWSUIT, AND <<SUBRECIPIENT/DEVELOPER>> MAY NOT AGREE TO ANY SETTLEMENT WITHOUT FIRST OBTAINING THE WRITTEN CONSENT OF THE OFFICE OF THE ATTORNEY GENERAL.

V. DEFAULT, ENFORCEMENT, AND REMEDIES

5.01 EVENTS OF DEFAULT

If <<Subrecipient/Developer>> defaults in the performance of an obligation under this Agreement or breaches any covenant, restriction, agreement, representation, or warranty set forth herein (the occurrence of each an "Event of Default"), and if such default or breach remains uncured for a period of thirty (30) days after <<Subrecipient/Developer>> receives written notice thereof, the GLO, HUD, and/or any other party listed in Section 3.03 of this Agreement may take action at law or in equity, as further described in Section 5.02, below.

5.02 REMEDIES AND ENFORCEABILITY

Upon the occurrence of an Event of Default, one or more of the following actions may be taken by the GLO or HUD to abate, prevent, or enjoin any such violation or to recover damages caused by <<Subrecipient/Developer>>'s default and/or breach.

- (a) The GLO or HUD may do the following:
 - (i) Apply to any court having jurisdiction of the subject matter for specific performance of this Agreement or for an injunction against any violation of this Agreement; or
 - (ii) Take any and all action at law, in equity, or otherwise for such relief as may be appropriate, including recapturing federal funds expended for the Project. The GLO shall be entitled to its reasonable attorneys' fees in any judicial action in which the GLO prevails. The GLO or HUD shall also be compensated for fees associated with additional compliance monitoring during corrective periods for noncompliance upon a default by <<Subrecipient/Developer>> hereunder.
- (b) The occupancy, use, and rent restrictions set forth herein shall inure to the benefit of LMI Households or ELI Households, and such requirements may be judicially enforced against <<Subrecipient/Developer>>. Any of the persons or entities described above shall be entitled to judicially enforce this Agreement in the same manner in which the GLO may seek judicial enforcement and shall be entitled to reasonable attorneys' fees; however, the Parties acknowledge that LMI Households or ELI Households cannot be adequately compensated by monetary damages in the event of <<Subrecipient/Developer>> default.
- (c) Any deed, lease, conveyance, or contract made in violation of this Agreement shall be void and may be set aside on petition of one or more of the Parties to the Agreement. All successors-in-interest, heirs, executors, administrators, or assigns shall be deemed Parties to this Agreement to the same effect as the original signer. When any such conveyance or other instrument is set aside by decree of a court of competent jurisdiction, all costs and expenses of such proceedings shall be taxed against the offending Party or Parties and shall be declared by the court to constitute a lien against the wrongfully deeded, sold, leased, or conveyed real estate until paid. Such lien may be enforced in such a manner as the court may order.
- (d) Notwithstanding anything to the contrary herein, any recapture of the federal funds expended for the Project to <<Subrecipient/Developer>> shall be subject and subordinate to the payment of indebtedness owed to any first lien mortgage held by an institutional lender (a "Senior Lender"). In each case where the GLO has given a notice of default under the Agreement to <<Subrecipient/Developer>>, the GLO shall deliver to Senior Lender a copy of said notice within five (5) business days of the issuance of the notice to <<Subrecipient/Developer>>. Failure of the GLO to send a copy of a notice of default to Senior Lender shall not prevent the exercise of the GLO's rights and remedies under the Agreement, subject to the provisions of this section. Senior Lender shall have the right, but not the obligation, to cure any default within ninety (90) days following the date of receipt of the copy of the

notice. Until the expiration of such ninety-day (90-day) period, the GLO shall not be entitled to exercise and enforce rights and remedies available to the GLO under this Agreement and/or under applicable laws other than specific performance and injunctive relief to enforce covenants and agreements contained in this Agreement. Following expiration of such ninety-day (90-day) period, the GLO shall be entitled to exercise and enforce all other rights and remedies available to the GLO under this Agreement and/or under applicable laws, including without limitation, rights to enforce covenants and agreements relating to income, rent, or affordability restrictions contained in this Agreement.

5.03 CUMULATIVE AND CONCURRENT REMEDIES

All rights, powers, and remedies of the GLO and/or HUD provided for in this Agreement or currently or hereafter existing at law, in equity, or by statute or otherwise shall be cumulative and concurrent. The exercise by the GLO of any of the rights or remedies provided for in this Agreement or currently or hereafter existing at law, in equity, or by statute or otherwise shall not preclude the simultaneous or later exercise by the GLO of any or all of such other rights, powers, or remedies as permitted by law.

The GLO's failure to enforce any covenant or to exercise any right or remedy provided in this Agreement shall not be deemed a waiver of such covenant nor a waiver of GLO's ability to exercise any right or remedy provided under this Agreement.

5.04 FORECLOSURE

In the event of foreclosure, deed in lieu of foreclosure, or similar disposition of the Property, this Agreement, including, but not limited to, all covenants, representations, warranties, reservations, restrictions, and remedies, will remain in place and will not be extinguished or terminated.

5.05 PROPERTY DAMAGED, DESTROYED, CONDEMNED, OR ACQUIRED FOR PUBLIC USE

<<Subrecipient/Developer>> represents, warrants, and agrees that if the Property, or any part thereof, shall be damaged or destroyed or shall be condemned or acquired for public use, <<Subrecipient/Developer>> will use its best efforts to repair and restore the Property to substantially the same condition as existed prior to the event causing such damage or destruction or to relieve the condemnation, and thereafter to operate the Property in accordance with the terms of this Agreement.

VI. MISCELLANEOUS

6.01 AMENDMENTS

This Agreement may not be amended or modified except by written instrument signed by <<Subrecipient/Developer>> and the GLO, or their respective heirs, successors, or assigns.

6.02 NOTICES

Any notices required under this Agreement shall be deemed delivered when deposited either in the United States mail (certified, postage paid, return receipt requested) or with a common carrier (overnight, signature required) to the appropriate address below.

<<Subrecipient/Developer>>:

<<Subrecipient/Developer Name>>

<<Street Address>>

<<City>>, <<ST>> <<Zip>>

Attention: << Subrecipient/Developer Representative Name>>

GLO:

General Land Office

1700 North Congress Avenue

Austin, TX 78701

Attention: Multi-family Housing Manager, Community Development and Revitalization Department

With a Copy to the GLO:

General Land Office

1700 North Congress Avenue, 7th Floor

Austin, TX 78701

Attention: Contract Management Department

A Party may change its address for legal notice delivery by informing all other Parties in writing in accordance with this section.

6.03 ENTIRE AGREEMENT

This Agreement, its Exhibits, and the Grant Agreement contain the entire understanding between the Parties hereto with respect to the subject matter thereof. There are no representations, oral or otherwise, other than those expressly set forth herein.

6.04 COOPERATION

Should any claims, demands, suits, or other legal proceedings arise from any matter relating to this Agreement and be made or instituted by any person against the GLO; HUD; officers, agents, or employees of the GLO and/or HUD; the State of Texas; or officers, agents, or employees of the State of Texas, <<Subrecipient/Developer>> shall fully cooperate by providing all pertinent information and reasonable assistance in the defense or other disposition thereof. <<Subrecipient/Developer>> may not agree to settle any such lawsuit or other claim without first obtaining the written consent of the GLO and, if applicable, the Office of the Attorney General.

6.05 SEVERABILITY

If a court of competent jurisdiction determines any provision of this Agreement is invalid, void, or unenforceable, then the remaining terms, provisions, covenants, and conditions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

6.06 PROPER AUTHORITY

Each Party hereto represents and warrants that the person executing this Agreement on its behalf has full power and authority to legally bind its respective entity.

6.07 COUNTERPARTS

This Agreement and any amendments hereto may be executed in any number of counterparts, each of which shall be an original, and all such counterparts shall constitute one and the same Agreement binding all Parties hereto, notwithstanding that all the Parties shall not sign the same counterpart.

6.08 GOVERNING LAW AND VENUE

This Agreement and the rights and obligations of the Parties hereto shall be governed by, and construed according to, the laws of the State of Texas, exclusive of conflicts of law provisions. Venue of any suit brought under this Agreement shall be in a court of competent jurisdiction in Travis County, Texas. <<Subrecipient/Developer>> irrevocably waives any objection, including any objection to personal jurisdiction or the laying of venue or based on the grounds of *forum non conveniens*, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction with respect to this Agreement or any related document. **NOTHING IN THIS AGREEMENT SHALL BE CONSTRUED AS A WAIVER OF SOVEREIGN IMMUNITY BY THE GLO.**

6.09 STATEMENTS OR ENTRIES

WARNING: ANY PERSON WHO KNOWINGLY MAKES A FALSE CLAIM OR STATEMENT TO HUD MAY BE SUBJECT TO CIVIL OR CRIMINAL PENALTIES UNDER 18 U.S.C. § 287, 18 U.S.C. § 1001, AND 31 U.S.C. § 3729.

Except as otherwise provided under federal law, any person who knowingly and willfully falsifies, conceals, or covers up a material fact by any trick, scheme, or device or who makes any materially false, fictitious, or fraudulent statement or representation or who makes or uses any false writing or document despite knowing the writing or document to contain any materially false, fictitious, or fraudulent statement or entry shall be prosecuted under Title 18, United States Code, § 1001.

Under penalties of 18 U.S.C. § 287, 18 U.S.C. § 1001, and 31 U.S.C. § 3729, the undersigned <<Subrecipient/Developer>> representative hereby declares that he/she has examined this Agreement and, to the best of his/her knowledge and belief, any statements, entries, or claims made by <<Subrecipient/Developer>> are true, accurate, and complete.

SIGNATURE PAGES FOLLOW

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

LEGAL DESCRIPTION

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK